UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

CRANBROOK CUSTOM HOMES, LLC

Plaintiff,

Case No.

v.

WAEIL FANDAKLY (an individual);
ABIGAIL FANDAKLY (an individual) and
BLAKE ELDERKIN (an individual)

Defendants.
_______________________________________/

COMPLAINT

Plaintiff Cranbrook Custom Homes, LLC, by and through its undersigned attorneys, for its Complaint for declaratory and other relief against Defendants Waeil Fandakly, Abigail Fandakly, Blake Elderkin (all defendants collectively referred to as "Defendants") states as follows:

PARTIES

1. Plaintiff Cranbrook Custom Homes, LLC ("Plaintiff") is a Michigan business with its principal place of business at 13001 23 Mile Rd., #200, Shelby Charter Township, MI 48315.

2. On information and belief, Defendants Waeil and Abigail Fandakly ("Defendants Fandakly") are the homeowners with a residential address of 3567 Nesting Ridge Dr., Rochester Hills, MI 48309.

3. On information and belief, Defendant Blake Elderkin ("Defendant Elderkin") is an architect whose residential address is 32729 Linderman, Warren, MI 48093.

JURISDICTION AND VENUE

4. This Court has jurisdiction over the subject matter of this action pursuant to 28 U.S.C. §§1331, 1332 and 1338(a).

5. Venue is proper in this judicial district because: (1) upon information and belief, Defendants do business in this judicial district, and (2) because a substantial part of the events or omissions giving rise to the claims in this case occurred in this judicial district and a substantial part of the property that is the subject of this case is situated in this judicial district. 28 U.S.C. §1391(b) and §1400(a).

NATURE OF THE COMPLAINT

6. This is a civil action for damages and injunctive relief arising out of the Defendants' willful acts of copyright infringement and unfair competition under applicable federal authority. As described in more detail below, Defendants deliberately and knowingly copied Plaintiff's copyrighted materials including

architectural designs and building plans, and have copied these designs and plans to build their new home in Rochester Hills, MI, which is currently still under construction.

FACTUAL BACKGROUND

7. Plaintiff incorporates by reference the allegations of Paragraphs 1 – 6 of this Complaint.

8. Plaintiff is one of southeast Michigan's largest custom home builder companies.

9. Plaintiff advertises its services and maintains its website at http://cranbrookcustomhomes.com/, which receives significant web traffic, demonstrating its popularity with consumers.

10. Plaintiff devotes considerable time, money and resources in designing custom homes, and handling all aspects of project management throughout the home building process. In doing so, Plaintiff has developed and implemented strategies to protect its products and services and associated intellectual property rights.

11. Plaintiff has built many different homes as part of its Meadowbrook Series of homes. One of the premier homes designed and built by Plaintiff is called the Esperance model home ("Esperance"). A Photo of the Plaintiff's Esperance model home is attached as **Exhibit A** ("Esperance Photograph").

12. To further protect Plaintiff's intellectual property rights with regard to the Esperance, Plaintiff has secured copyright protection and is the owner of the following items that are covered by U.S. copyright registrations (hereinafter "Plaintiff's Copyrighted Materials" or "Copyrighted Materials"):

a. Esperance Brochure, Certificate of Registration Number (TX 8-309-293), registration date November 30, 2016 (See enclosed **Exhibit B** for Copyright Registration Certificate and Deposit Materials);

b. Esperance Blue Prints, Certificate of Registration Number (VA 2-033-160), registration date December 2, 2016 (See enclosed **Exhibit C** for Copyright Registration Certificate and Deposit Materials); and

c. Esperance Building Design, Certificate of Registration Number (VA 2-033-158), registration date December 2, 2016 (See enclosed **Exhibit D** for Copyright Registration Certificate and Deposit Materials).

13. **Exhibits B, C, and D** are true copies of these copyright registration certificates and are collectively referred to as "Plaintiff's Copyright Registrations".

14. Plaintiff became aware of a home being built, and on information and belief, still currently under construction, at the address 1768 Piccadilly Court, Rochester Hills, MI 48309 ("Infringing Home").

15. On information and believe, Plaintiff believes the homeowners of the Infringing Home to be Defendants Fandakly. A copy of the mortgage papers referencing the Infringing Home are attached as **Exhibit E**.

16. On information and belief, Plaintiff discovered that the architectural building plans for the Infringing Home were prepared by architect Defendant Elderkin, attached hereto as **Exhibit F**, ("Infringing Design Plans").

17. On information and belief, Plaintiff obtained documents which were filed by Defendant Fandaklys with the city of Rochester Hills as part of the home-building process ("City Building Permit Documents"). These documents are attached as **Exhibit G.**

18. On information and belief, Plaintiff discovered that it's Esperance Photograph (as shown in **Exhibit A)**, was also included within Defendant Fandaklys' public file with the developer of the project for the construction of the Infringing Home.

19. Plaintiff has compared its Esperance Building Design, Esperance Brochure and Esperance Blue Prints to the Infringing Design Plans. Defendants' Infringing Design Plans are copies of Plaintiffs' Esperance Building Design, Esperance Brochure and Esperance Blue Prints.

20. A direct comparison of the Plaintiff's Esperance Blue Prints and the Infringing Design Plans have been made and they are shown overlaid in relation to

one another in **Exhibit H**, referred to as the "Combined Plans". The Combined Plans show the first floor, second floor and front elevation of both the Plaintiff's Esperance Blue Prints and the Infringing Design Plans.

21. Plaintiff has sent letters to Defendants informing them of the ongoing infringements and demanding that they cease and desist any further infringement, and that they compensate Plaintiff for the damages sustained due to Defendants' infringements.

22. Plaintiff has attempted to resolve this dispute, but Defendants have failed to resolve the matter.

COUNT I
FEDERAL COPYRIGHT INFRINGEMENT UNDER 17 U.S.C. § 501

23. Plaintiff incorporates by reference the allegations of Paragraphs 1 – 22 as though fully set forth herein.

24. At all relevant times, the Plaintiff has been the holder of the exclusive rights that have been infringed by Defendants, including but not limited to the exclusive rights covered by Plaintiff's Copyright Registrations.

25. On information and belief, Defendants had access to Plaintiff's Copyrighted Materials, including the Esperance Photo which was found in Defendant Fandaklys' public file relating to the Infringing Home.

26. Plaintiff's Copyrighted Materials enjoy all exclusive rights under 17 U.S.C. § 106 including, but not limited to, the right to exclude others from

reproducing the Copyrighted Materials, preparing derivative works of the Copyrighted Materials, and distributing and displaying copies of the Copyrighted Materials. Defendants have violated one or more rights of Section 106 of the Copyright Statute through their actions.

27. On information and belief, Defendants have either directly, or indirectly, induced, vicariously infringed, or contributorily infringed Plaintiff's Copyrighted Materials, either individually or in concert, and have used, continue to use, reproduced, and continue to reproduce, Plaintiff's Copyrighted Materials.

28. Defendants' acts violate Plaintiff's exclusive rights of reproduction, public display, distribution, and the making of derivative works, and each of Defendants' acts constitutes a separate and actionable infringement of Plaintiff's exclusive rights under the Copyright Act.

29. Defendants' acts of copying, reproducing, and preparing derivative works of Plaintiff's Copyrighted Materials, and distributing copies and making public display of the Infringing Design Plans, which are substantially similar to the Esperance Brochure and Esperance Blue Prints, is an infringement under 17 U.S.C. § 501, and was and is an infringement that is willful, intentional, and in disregard of and with indifference to the rights of the Plaintiff.

30. Defendants' acts of planning, preparing, designing and building the Infringing Home, which is substantially similar to the Esperance Building Design,

is an infringement under 17 U.S.C. § 501, and was and is, an infringement that is willful, intentional, and in disregard of and with indifference to the rights of the Plaintiff.

31. Plaintiff is entitled to relief pursuant to 17 U.S.C. § 504 as a result of Defendants' wrongful acts of infringement including, but not limited to statutory damages, attorney's fees, Defendants' profits, Plaintiff's losses, and costs, pursuant to 17 U.S.C. §§ 504 and 505, and any other basis under the law.

32. Defendants' acts are causing and, unless enjoined and restrained by this Court, will continue to cause the Plaintiff great and irreparable injury that cannot fully be compensated or measured in money.

33. Pursuant to 17 U.S.C. §§ 502 and 503, Plaintiff is entitled to injunctive relief prohibiting Defendants from further infringement of Plaintiff's Copyrighted Material, including the cessation of construction of the Infringing Home, and destruction of all products that infringe on Plaintiff's Copyrighted Materials including, all brochures, building plans, blueprints, designs, and any other documentation relating to the Infringing Home.

COUNT II
FALSE DESIGNATION OF ORIGIN, PASSING OFF, AND UNFAIR COMPETITION UNDER 15 U.S.C. § 1125(a)

34. Plaintiff incorporates by reference the allegations of Paragraphs 1 – 33 of this Complaint.

35. By creating the Infringing Design Plans and constructing the Infringing Home, which are substantially similar to the Esperance Design Plans and the Esperance home, Defendants have falsely represented that they are the originators, authors and/or owners of design plans that are substantially similar to the Esperance Design Plans and the Esperance home. This false representation is likely to cause confusion or mistake, and deceive the relevant public as to the origin, affiliation, association or approval of the Infringing Design Plans.

36. By constructing the Infringing Home, Defendants have given a false or misleading impression, which is likely to cause confusion, or to cause mistake, or to deceive the public as to the affiliation, connection, or association of the Plaintiff with the Defendants, when in fact no such affiliation, connection, or association exists between the Plaintiff and Defendants.

37. Defendants by virtue of the above acts, are likely to cause the public to mistakenly believe that their Infringing Design Plans originate from, are endorsed by, or are in some way affiliated with Plaintiff and thus constitutes false designation of origin, passing off, and unfair competition.

38. Defendants have violated Section 43(a) of the Lanham Act, 15 U.S.C. § 1125(a).

39. Because Defendants' actions, on information and belief, were carried out intentionally, willfully and/or deliberately in violation of Plaintiff's rights,

Plaintiff is entitled to an award of treble damages under Section 35(a) of the Lanham Act, 15 U.S.C. § 1117(a).

40. This is an exceptional case, and thus Plaintiff is entitled to an award of attorneys' fees under Section 35(a) of the Lanham Act, 15 U.S.C. § 1117(a).

PRAYER FOR RELIEF

WHEREFORE, Plaintiff respectfully requests that this Court enter judgment in its favor on each and every claim for relief set forth above and award it relief including, but not limited to, the following:

A. A determination by this Court that each of the Defendants have infringed Plaintiff's Copyright Registrations, and have violated 17 U.S.C. § 501, and 15 U.S.C. § 1125(a), and it further be held that each such action was willful;

B. An award of damages, costs and attorney fees from each Defendant for liability for copyright infringement pursuant to 17 U.S.C. § 504 and § 505;

C. An order requiring Defendants to account for and be disgorged of all gains, profits, and advantages derived by their copyright infringement, pursuant to 17 U.S.C. § 504;

D. An award for statutory damages in the amount of $150,000 per act of infringement due to Defendants' willful copyright infringement, pursuant to 17 U.S.C. § 504(c);

E. An order requiring Defendants to identify and then destroy all infringing articles and the instrumentalities used to make those articles pursuant to 17 U.S.C. § 503;

F. A determination by this Court that each Defendant has violated Section 43(a) of the Lanham Act, and that each Defendant's unlawful actions are exceptional, warranting an award of treble damages to Plaintiff, plus reasonable attorney fees, pursuant to 15 U.S.C. § 1117;

G. An order disgorging Defendants' profits, all damages sustained by Plaintiff, and costs of the action, pursuant to 15 U.S.C. § 1117;

H. An award of prejudgment and post-judgment interests and costs of suit;

I. A permanent injunction restraining each of the Defendants, their respective officers, agents, servants, employees, attorneys, and those in act of concert or participation with them, or any of them who receive actual notice of the order by personal service or otherwise, from reproducing, selling, distributing, publicly displaying, creating derivative works, or otherwise further infringing the Plaintiff's Copyrighted Materials, and from assisting or inducing others to infringe Plaintiff's Copyrighted Materials; and

J. An award of any such other and further relief as this Court deems just and equitable.

JURY DEMAND

Plaintiff hereby requests a trial by jury on all claims and issues so triable.

Respectfully submitted,

FISHMAN STEWART PLLC

Dated: April 4, 2017

/s/ Douglas P. LaLone (P45751)

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VERIFICATION

Sebastian Lombardo, being first duly sworn deposes and says:

(1) I am the owner of President of Cranbrook Custom Homes, LLC.

(2) I have carefully read the *Complaint and Jury Demand* and the facts set forth therein are true and correct based on my own personal knowledge. Facts averred on information and belief, I believe to be true.

(3) If called as a witness, I am competent to testify to those facts.

Further Declarant saith not.

Sebastian Lombardo